

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

**SEMCO ENERGY GAS COMPANY, A
DIVISION OF SEMCO ENERGY, INC.¹**

Employer

and

Case 7-RC-22787

**UTILITY WORKERS UNION OF
AMERICA (UWUA), AFL-CIO²**

Petitioner

APPEARANCES:

David A. Kadela, Attorney, of Columbus, Ohio, for the Employer.
Kim Coonan, of Bay City, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTIONS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record³ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

³ The parties filed briefs in this matter, which have been considered. The Employer filed a Motion to Strike Petitioner's Brief on the basis that it was not timely and properly served on the Employer, was single-spaced and contained facts not in the record. Petitioner responded to the motion. While the Employer's contentions are true, the Employer has had an opportunity to respond to the brief. Thus, I will not strike it. **Board Rules and Regulations**, Section 102.114(c)(2). However, I have not considered any representations made in the brief that are not contained in the record.

error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Overview

The Petitioner, by its Local 473, currently represents a single bargaining unit of about 39 utility mechanics and 1 storekeeper employed at or out of the Employer's Eastern District Port Huron and New Haven, Michigan facilities. By the filing of this petition, the Petitioner primarily seeks an *Armour-Globe*⁴ self-determination election to add approximately 26 full-time and regular part-time operations technicians 1, bill collectors and service dispatchers in the Eastern District Port Huron area to its existing unit. In the alternative, the Petitioner seeks to represent the operations technicians 1, bill collectors and service dispatchers in the Port Huron area in a separate bargaining unit⁵. There is no history of collective bargaining with respect to the unit sought by the Petitioner.

The Employer maintains that an *Armour-Globe* self-determination election to include the operations technicians 1, bill collectors and service dispatchers is inappropriate as there is insufficient community of interest among the petitioned-for employees and the represented employees. The Employer additionally contends that all of the service dispatchers are supervisors within the meaning of Section 2(11) of the Act and the only appropriate unit must include the operations technicians 1 and the bill collectors separate from the represented unit. Further, the Employer contends in its brief that if the service dispatchers are found not to be supervisors, they are an inappropriate

⁴ *Globe Machine & Stamping, Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942).

⁵ In its brief, the Employer for the first time raises the argument that the Petitioner, as an international union, does not have standing to request a self-determination election because its local union, Local 473, and not the Petitioner, actually represents the represented Eastern District employees. However, the current contract in its introduction states the agreement is between the Employer and "Utility Workers of America, AFL-CIO, Local No. 473, both hereafter referred to as the 'Union'." (emphasis added) This indicates that both the Petitioner and its Local 473 represent the unit. Further, it is not uncommon for an international union to petition to represent certain employees and thereafter, if successful in the election, assign representational duties to one of its various locals as servicing agent for the international union. It is evident from the circumstances surrounding the instant case that it is Petitioner's intention, if successful, to assign representational duties with respect to the petitioned-for employees to its Local 473.

voting group standing alone based on their community of interest with the customer service representatives. Thus, the Employer argues that any voting group which includes the service dispatchers must also include the customer service representatives.

On the supervisory issue, I find that the Employer has not satisfied its burden of proof that any of the dispatchers, including the lead dispatcher, are supervisors within the meaning of Section 2(11). As to the voting groups, I find that the operations technicians 1 and bill collectors possess a sufficient community of interest with the represented unit to vote in a self-determination election as to whether to be included in that unit. Regarding the service dispatchers, I find that they possess a substantial community of interest with the customer service representatives so as to require their inclusion together as a voting group. I further find that, while the service dispatchers and customer service representatives do not possess a sufficient community of interest with the other petitioned-for employees to be included in a voting group with them, they do share a community of interest with the represented employees to vote in a self-determination election as to whether to be included in the unit currently represented by the Petitioner.

Business Operations

The Employer is a natural gas utility engaged in the business of the production, transmission, storage and distribution of natural gas to a number of communities located throughout Michigan. In carrying out its operations, the Employer employs, *inter alia*, utility mechanics, including field service, distribution, and production, transmission and storage employees; operations technicians 1⁶, including leak surveyors, line locators/stakers, and inspectors; bill collectors; service dispatchers; and customer service representatives.

The Employer is divided into four districts within Michigan: the Eastern District, servicing primarily the Port Huron and New Haven areas; the Central District, servicing parts of central Michigan, including Albion and Battle Creek; the Western District, servicing parts of southwest Michigan, including Holland, Niles and Three Rivers; and the Northern District, servicing the upper peninsula, primarily Marquette and Houghton. Each district is managed separately: the Eastern district is managed by Vice President Thomas East; the Central district is managed by Doug Arney; the Western district is managed by Greg Holmes; and the Northern District is managed by Mark Kachur.⁷ Reporting to East in the Eastern District is Greg Martin, manager of Eastern District operations. Seven first line supervisors serve directly below Martin: Chuck Langolf,

⁶ The Employer's operations technicians are classified as operations technicians 1, 2 and 3. The parties stipulated at the hearing that the operations technicians 2 and 3 should be excluded from any unit found to be appropriate herein as they do not share a sufficient community of interest with the petitioned-for employees.

⁷ The record also indicates that there is an out-state area manager, Colleen Starring, who apparently oversees the entire out-state area. The parties agree that the above managers are managerial and/or supervisory employees within the meaning of the Act.

Marvin Mitchell, Paul Leffler, Joe Falk, Ralph Schoettle, Michael Wilton and John Taylor.

The Petitioner or the Steelworkers Union represents employees employed in each of the districts. In the Central district, the Petitioner, via its Local 445, represents a field employee unit consisting of utility mechanics, storekeeper and meter shop employees, and a clerical unit of customer service representatives and bill collectors employed at the Employer's Battle Creek facility. In the Western district, the Steelworkers Union represents utility mechanics, storekeepers and bill collectors. In the Northern district, the Steelworkers Union represents utility mechanics and bill collectors. As stated above, in the Eastern district, the Petitioner, via its Local 473, represents approximately 39 utility mechanics and one storekeeper.

The Employer's Eastern district has three office locations. The main office is located at 2915 Lapeer Road, Port Huron. Reporting to this office are the utility mechanics, operations technicians, bill collectors, service dispatchers, corrosion technicians, technical/engineering, customer service representatives, accounts receivable, administrative assistants, marketing and supervision. There is a satellite office in New Haven which serves basically as a reporting office for some of the home-reporting utility mechanics and operations technicians. There is also a smaller corporate office located on Water Street, Port Huron which employs the Employer's chief operating officer, accounting employees, gas control employees, some marketing employees, and some employees responsible for codes and standards.

The Employer will be moving its entire operations to two new buildings in the near future⁸. One of the buildings is located on 4th Street, Port Huron and will function as the corporate headquarters. All office personnel and employees engaged in across-state activities, including accounts receivable, customer service representatives, call center, service dispatchers, gas supply dispatchers, technical engineering, executive, accounting/finance, human resources, and rates and regulations will move to the corporate headquarters in about December 2004. The other building is located on 16th Street, Port Huron and will function as the operations center. All field operational employees, including the utility mechanics, operations technicians, bill collectors, technical/engineering, corrosion technicians, administrative assistants, marketing, and operational supervision will move to the operations center in about February 2005.

Represented employees

The utility mechanics are categorized into three groups: (1) service group; (2) distribution group; and (3) production, transmission and storage (PTS) group.

⁸ The Employer has already sold its Port Huron facilities currently located on Lapeer Street and Water Street. The Employer's New Haven facility will continue to operate as a reporting office for the home-reporting utility mechanics and operations technicians.

The service group consists of approximately 16 service mechanics who perform service work from the gas meter into the customer residence or building. They spend a majority of their time in the field working on gas meters. They use miscellaneous hand tools, such as combustible gas indicators, volt meters, and leak detection equipment to turn meters on and off, test for a short or current in the meter, and detect leaks at the meter site. They are supervised by Chuck Langolf and Marvin Mitchell. Langolf works out of the New Haven office and supervises eight service mechanics. Mitchell works out of the Lapeer Road office and supervises the other eight service mechanics. Approximately 50 percent of the service mechanics are home-reporting and do not report to either office. Rather, they receive their work orders exclusively from service dispatchers via radio or their in-truck terminal. They report to the Lapeer Road or New Haven offices on an infrequent basis to replenish necessary supplies and attend employee meetings. The other 50 percent of the service mechanics report daily to either the Lapeer Road or New Haven offices for about one-half hour in the morning and one-half hour at the end of their day. Like the home-reporting service mechanics, they receive their work orders from the service dispatchers via radio or in-truck terminal, although they also may receive work assignments directly from their supervisor. While, for the most part, the service mechanics work individually in the field, in a situation where a gas leak is detected, they call out a distribution utility mechanic for repair of the leak. The service mechanics generally work from 8:00 a.m. to 4:00 p.m., although some work 10:00 a.m. to 6:00 p.m., and others work four ten-hour shifts per week.

The distribution group consists of approximately 15 distribution mechanics who work underground on gas mains and service from the city gate station to the gas meter. They use more hand tools than the service mechanics, as well as larger equipment, such as backhoes, trenchers and air compressors, to fix gas leaks. They work in groups of two to three. Like the service mechanics, they report to the Lapeer Road or New Haven office for about one-half hour each morning to pick up parts and work orders, spend a majority of their work day in the field, and report back to the office for about one-half hour at the end of their shift to turn in paperwork. They are supervised by Paul Leffler and Joe Falk. Leffler works out of the New Haven office and supervises seven distribution mechanics and Falk works out of the Lapeer Road office and supervises eight distribution mechanics. Like the service mechanics, they regularly receive their work orders from service dispatchers via radio or in-truck terminal. As noted above, they interact with service mechanics when they are called by them to respond to a gas leak. They also may be called out by an operations technician 1 to respond to a detected gas leak at a new construction site or leak survey sites. This latter contact occurs seasonally, about three months a year, about two to three times per week. The distribution mechanics generally work from 8:00 a.m. to 4:00 p.m.

The PTS group consists of approximately eight PTS mechanics who are responsible for large volume commercial and industrial customers and work on larger

meter sets. They use heavier equipment similar to the service mechanics and work with more electronic-type equipment, such as combustible gas indicators, pressure gauges and electronic pressure devices. They report to the Lapeer Road office for about one-half hour each morning to pick up parts and work orders, spend a majority of their work day in the field, and report back to the office for about one-half hour at the end of their shift to turn in paperwork. While in the field, the PTS mechanics interact primarily with engineers and operations specialists⁹. However, on a rotating basis, the PTS mechanics spend about two days per week in the office to work on a regulator or perform repair work in the shop. While in the shop, the PTS mechanics interact regularly with the storekeeper, who is responsible for providing parts, and other employees who may be in the employee break room at the same time. The PTS mechanics apparently receive their work assignments from their supervisor, Ralph Schoettle, at the Lapeer Road office. Unlike the service and distribution mechanics, they do not have much interaction with the service dispatchers and receive work orders from them related only to infrequent gate station gas leaks. They do have some interaction with gas control dispatchers¹⁰ regarding low-pressure incidents. The PTS mechanics generally work from 8:00 a.m. to 4:00 p.m.

All three utility mechanic groups provide 24-hour on-call service on a rotating basis. The rates of the utility mechanics and storekeeper range from \$18.20 to \$21.46 per hour.

The operations technicians 1

There are approximately 12 operations technicians 1. They are responsible for leak surveys, line locating/staking, and inspections. There are two operations technicians 1 currently performing leak survey work. They are supervised by Michael Wilton out of the Lapeer Road office. They receive their work assignments directly from Wilton. Leak surveys are performed seasonally, about three months out of the year. The leak survey technicians get their maps from the corrosion department¹¹ and use the maps at the assigned work site to locate possible gas leaks. In locating a possible gas leak, the leak survey technician uses a flame ionization unit. Once a leak is detected, the leak survey technician is responsible for classifying a leak from A, being the most minimal leak, to C, being the highest severity leak. When a C-level leak is detected, the leak survey technician is responsible for calling out a distribution utility mechanic to respond to the leak. While a majority of leak surveys are performed by leak survey technicians, they are also performed by one utility mechanic for about one week out of the three months,

⁹ The record indicates that operations specialists are more marketing-type employees and are distinguishable from operations technicians. Their status is not in issue.

¹⁰ There are approximately eight gas control dispatchers currently located at the Water Street facility. They will be moving to the Employer's corporate headquarters building. The Petitioner is not seeking to represent them and their status is not in issue.

¹¹ The parties stipulated at the hearing that the corrosion technicians in the corrosion department should not be included in the unit as they do not share a sufficient community of interest with any of the petitioned-for employees or the represented employees.

pursuant to the utility mechanics' collective bargaining agreement.

There are four operations technicians 1 currently performing line locating/staking work. They are supervised by Wilton. It appears that most of the line locator technicians are home-reporting and report to the New Haven office only to replenish supplies and attend required employee meetings. The other non-home-reporting line locating technicians report to the Lapeer Road office. They all receive their work assignments from Wilton or Miss Dig specialist Tim Lynch¹². Construction contractors throughout the state contact the central Miss Dig system for staking assistance. The Miss Dig system then dispatches calls to Lynch based on the geographical area of the requested staking. Lynch is responsible for screening the calls to determine if the geographical location in question is covered by the Employer. Lynch then dispatches related calls to the line locating technicians for staking. The line locating technicians are responsible for getting a geographical map of the location and locating the gas main. They use a locator to locate the main and either stake or apply paint to the location. If a utility mechanic is dispatched to a new construction site for work and determines in the course of his work assignment that a line needs to be staked, the utility mechanic may independently stake the gas main and perform the same work performed by line locator technicians.

There are six operations technicians 1 currently performing inspection work. They are supervised by Joseph Falk, who also supervises distribution mechanics, out of the Lapeer Road office. They receive their work assignments from Falk or Colleen Johnson, senior administrative assistant at the Lapeer Road office in charge of coordinating new construction activities involving the Employer across the state¹³. The inspector technicians assist contractors and construction crews in staking out gas mains on new construction. In this regard, the inspector technicians might independently stake out a main for the contractor or prepare drawings for the contractor for contractor installation of the main. The inspector technicians are also responsible for monitoring gas main installation to ensure compliance with the Michigan Gas Safety Code. The inspector technicians interact regularly with employees from the engineering department. On occasion, about six to eight times during the new construction season for about four consecutive days, the inspector technician might interact with a utility mechanic working on the same job by assisting the utility mechanic in staking or flagging a line or preparing site drawings.

All of the operations technicians 1 rotate among the above-three categories on a seasonal basis. They all primarily perform technical drafting work on new construction sites and mainly use calculation equipment to perform their work. Their pay scale is \$14.31 to \$19.31 per hour. Unlike the utility mechanics, they do not engage in physical

¹² The parties stipulated at the hearing that Miss Dig specialist Tim Lynch, a clerical employee, should not be included in the unit as he does not share a sufficient community of interest with any of the petitioned-for employees or the represented employees.

¹³ The parties agree that Johnson is a managerial employee and excluded from the unit.

labor and do not receive work assignments through service dispatchers. Like the utility mechanics, they either home-report out of the New Haven office or report to the Lapeer Road office for about one-half hour each morning to work on drawings, pick up supplies and work assignments, spend a majority of their work day in the field, and report back to the office for about one-half hour at the end of their shift to complete their drawings and turn in paper work. Except for approximately two line locating operations technicians, who currently home-report to the New Haven office, all of the operations technicians 1 will be moving to the Employer's new operations center in about February 2005. Like the utility mechanics, the operations technicians 1 generally work from 8:00 a.m. to 4:00 p.m. and are subject to 24-hour on-call on a rotating basis. While the operations technicians 1 and the utility mechanics attend separate employee meetings, they do meet together on a monthly basis for standard procedure and safety (SPS) training. As described above, some operations technicians 1 and utility mechanics are jointly supervised by Falk.

The bill collectors

There are six bill collectors who are supervised by business office supervisor John Taylor in the Lapeer Road office.¹⁴ They receive their work assignments primarily from him. They are responsible for providing shut-off notice to, and shutting off gas meters of, non-paying customers. They report to the Lapeer Road office for about one hour each morning to review past due accounts, spend a majority of their work day in the field, and report back to the office for about one hour at the end of their work day to turn in paperwork. If a collector is not successful in shutting off a meter, he is responsible to either directly call out a utility mechanic for assistance or contact a service dispatcher to dispatch a utility mechanic. This happens about once every five days. While a majority of gas shutdowns are performed by the bill collectors, utility mechanics also perform some shutdowns pursuant to terms of their collective bargaining agreement and shut down gas to customers for non-billing-related reasons. The record also indicates that operations technicians 1 are rotated to perform gas shutdowns. The bill collectors interact regularly with printing collections supervisor Cheryl Hachee, and employees from accounts receivable and customer service regarding delinquent accounts. The record does not disclose the wage rates of bill collectors.

The service dispatchers

There are eight service dispatchers who are supervised by call center supervisor William Moser. Moser generally works 8:00 a.m. to 5:00 p.m. Moser also supervises 29 customer service representatives located in the call center at the Lapeer Road office. Service dispatch is available round-the-clock, seven days per week. The service

¹⁴ One of the six bill collectors, Lisa Waters, also performs meter reading duties. The parties are in agreement that she should be included as a bill collector in any unit found to appropriately include that classification.

dispatchers work varied shifts. Unlike the field employee classifications of utility mechanic, operations technician 1 and bill collectors, the service dispatchers and customer service representatives perform work across the entire state. The service dispatchers receive calls from customers throughout the state and are responsible for dispatching those calls to utility mechanics across the state.

During general business hours, when a customer calls, she is prompted by a telephone recording to either customer service or service dispatch. The service dispatchers take emergency service calls from customers during business hours and route the calls directly to utility mechanics via either radio or in-truck terminal. The record is silent as to the guidelines followed in calling the utility mechanics during business hours. The customer service representatives take non-emergency calls from customers and may schedule appointments for utility mechanics, which are forwarded to the service dispatchers. The service dispatch department operates three separate customer phone lines and is located in the basement of the Lapeer Road building, adjacent to the technical/engineering department. The call center is located on the second floor. They both will relocate to the second floor of the new corporate headquarters building when it opens in about December 2004.

During business hours, the service dispatchers and call center customer service representatives regularly assist each other in re-routing phone calls and taking phone calls from both departments if one of the departments is particularly busy. When Moser leaves the facility at 5:00 p.m., there is no supervisor present. However, all of the field supervisors rotate as on-call supervisors and there is a management emergency list kept in the office for the service dispatchers. In case of emergency calls between the hours of 5:00 p.m. and 8:00 a.m., the service dispatchers follow strict procedures, including calling 911 if necessary, dispatching an on-call utility mechanic from the on-call list, and contacting the on-call supervisor from the management emergency list. If the on-call utility mechanic refuses to comply with the service dispatcher's directions, the dispatcher may dispatch the job to another utility mechanic on the on-call list. In the case of a non-emergency situation, the record indicates that the service dispatcher usually leaves the matter for the next business day to be addressed by a supervisor.

The service dispatchers are divided into three categories: dispatcher 1, dispatcher 2, and lead dispatcher. Currently, there is one dispatcher 1, six dispatcher 2s, and one lead dispatcher. The dispatcher 1 is an entry-level position subject to six-month reviews by the supervisor for promotion to dispatcher 2. The dispatcher 2 is a more experienced dispatcher and provides some on-the-job training to the entry-level dispatcher 1. The dispatcher 1 pay scale is from \$16.50 to \$18.50 per hour. The dispatcher 2 pay scale is from \$18.50 to \$22.57 per hour. The lead dispatcher pay scale is from \$20.80 to \$25.41

per hour¹⁵. All dispatchers wear similar clothing. They attend regular meetings with the customer service representatives conducted by Moser. They do not attend any joint meetings with any of the other petitioned-for employees or the represented employees.

The service dispatchers 1 and 2 do not have any authority to hire or discharge employees. They have no authority to directly discipline other employees. They are responsible to report any incidents occurring after hours involving utility mechanics to their supervisor. In this regard, the service dispatcher may be involved in an investigation regarding the conduct of a utility mechanic by giving a report and recommendation to the supervisor regarding the incident. However, it is up to the supervisor to determine what discipline, if any, is warranted. Likewise, a service dispatcher 2 may report work performance problems regarding a dispatcher 1, but it is up to the supervisor to determine what discipline, if any, is warranted.

Moser issues performance reviews to the service dispatchers on a quarterly basis. While Moser may seek the input and recommendation of a dispatcher 2 regarding the evaluation and promotion of a dispatcher 1, the record indicates that all final reviews and promotions are subject to Moser's complete review of the employee file, an independent review of employee progress, and additional consultation with all senior dispatcher 2 employees in the department.

The record indicates that the midnight shift service dispatcher is responsible for preparing service utility mechanic schedules for the next business day. The service dispatcher inputs the non-emergency service calls he receives into a scheduling program on his computer and assigns the calls to the various service utility mechanics. The scheduling program has built-in criteria to assess service utility mechanic skill levels and it assigns the job to the appropriate service mechanic.¹⁶ However, sometimes the dispatcher needs to re-adjust the assignment based on an independent review of the service mechanic's workload. This schedule is subject to review and editing by the supervisor at the start of the next business day.

Bridget McCabe is the lead dispatcher. While the record is unclear as to her specific work hours, she works Friday through Monday. There is no supervisor present at the facility generally on most Saturdays and all Sundays. She receives the same benefits as the other dispatchers. During her work hours on Saturday and Sunday when there is no supervisor present, McCabe is responsible for delegating work assignments, handling questions from other departments and assisting other dispatchers in their dispatching duties. During the weekend, there are generally one or two other dispatchers on duty with McCabe. She is also responsible for monitoring and evaluating customer-to-dispatcher phone calls. In this regard, she will complete a scoring sheet for each recorded

¹⁵ Prior to these pay scales, which recently went into effect, the pay scale for all dispatchers was \$14.31 to \$19.31 per hour.

¹⁶ There is no scheduling program at this time for the distribution or PTS utility mechanics.

phone call that she listens to and evaluates. Those scoring sheets are then compiled and turned over to her supervisor for utilization in the quarterly performance review process.

Like dispatchers 1 and 2, McCabe does not possess authority to hire or discharge employees. While Moser testified that McCabe has authority to discipline, during her two-month tenure in this position there is no history of any disciplinary action by her. As lead dispatcher, she attends meetings pertaining to the dispatch department with various supervisors which are held about two times per month. She does not initial or approve time sheets of any employees, even if a supervisor is not present at the facility. She records her own work time on the same kind of time sheet completed by the other dispatchers. While Moser testified she has authority to send other dispatchers home for any reason and call in another dispatcher if necessary, the record indicates she has sent home an employee only for illness-related reasons.

The customer service representatives

There are 29 customer service representatives. They are supervised by Moser. Like the service dispatchers, they are divided into three categories: customer service representative 1, customer service representative 2, and lead customer service representative. The customer service representative 1 is an entry-level position subject to six-month reviews by the supervisor for promotion to customer service representative 2. Customer service representatives service all four Employer districts across the state.

As noted above, the customer service representatives receive mainly non-emergency phone calls from customers and either handle those calls on their own or transfer them to the appropriate department. When the customer service representatives handle non-emergency calls for service, they schedule service appointments for the customer with a service utility mechanic and either forward this information to a service dispatcher for communication with the utility mechanic or communicate directly with the utility mechanic. There are frequent occasions when a customer accidentally presses the incorrect telephone prompt and is connected to customer service in connection with an emergency matter. In those situations, the customer service representative will transfer the call to service dispatch. There are also frequent occasions when a customer service representative will assist the dispatchers when they are busy in the dispatch department. Likewise, when the dispatchers are not busy, they routinely handle customer service calls.

The customer service representatives work various eight hour shifts between 7:00 a.m. and 7:00 p.m., Monday through Friday. There is a part-time customer service representative who works on Saturdays. The pay scale of the customer service representatives is \$12.74 to \$14.30 per hour.

All of the petitioned-for employees and customer service representatives, as well

as the represented employees, receive similar benefits. All of the petitioned-for employees and customer service representatives are covered by the same employee handbook, while the represented employees are covered by a separate employee handbook.

Analysis

Supervisory status of Service Dispatchers

Section 2(3) of the Act excludes from the definition of the term “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines a “supervisor” as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be interpreted in the disjunctive and the possession of any one of the authorities listed in that section places the employee invested with this authority in the supervisory class. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949); *Allen Services Co.*, 314 NLRB 1060, 1061 (1994). However, the Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Unifirst Corp.*, 335 NLRB 706, 712-713 (2001); *Asuza Ranch Market*, 321 NLRB 811, 812 (1996). The burden of proof rests with the party seeking to exclude the individual as a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999).

The Employer contends that all eight service dispatchers are supervisors by virtue of their authority to effectively recommend discipline of utility mechanics and other dispatchers; participation in the performance evaluations of other dispatchers; assignment of work to, and preparation of schedules for, utility mechanics; and substitution for their supervisor during non-business hours. It further contends the lead service dispatcher possesses additional supervisory authority.

I find that the service dispatchers do not possess the independent authority to recommend discipline. Rather, they perform only a reporting function for Moser or the utility mechanics’ supervisors, who decide what, if any, disciplinary action should be taken. The service dispatchers’ involvement in such matters is more akin to an administrative function of documenting employee performance without having any real impact on the eventual action to be taken with regard to employee terms and conditions

of employment. *Passavant Health Center*, 284 NLRB 887, 889 (1987). The service dispatchers merely report infractions or incidents, and Moser or other supervisors determine whether discipline will issue and to what degree. The Employer's contention that lead dispatcher McCabe possesses the authority to issue disciplinary reprimands is not established by the weight of the evidence. Even assuming such authority exists, McCabe has never independently exercised such authority, nor is there any evidence that such reprimands, even if given, would have an adverse effect on an employee's job status or tenure. *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1195 (1994).

With regard to employee evaluations, the Employer asserts that the more experienced dispatcher 2's involvement in the evaluation of less experienced dispatcher 1's and Employer reliance upon the dispatcher 2's recommendation for promotion of a dispatcher 1 confers supervisory status. However, the record clearly indicates that, while Moser may seek the input and recommendation of a dispatcher 2 regarding the evaluation and promotion of a dispatcher 1, all final reviews and promotions are subject to Moser's complete review of the employee file, an independent review of employee progress, and additional consultation with all senior dispatcher 2 employees in the department. Moser completes and approves the evaluations of all service dispatchers. There is no evidence indicating these evaluation comments of the more experienced dispatchers, which may be sought out by the supervisor, have any effect on the evaluated employees' retention or wage rates. Moser makes these determinations independently and communicates them to the evaluated employees. See *MJ Metal Products, Inc.*, 325 NLRB 240, 240 (1997); *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426, 427 (1998).

Lead dispatcher McCabe's additional role in monitoring and evaluating customer-to-dispatcher recorded telephone conversations does not elevate her to a supervisory level where, again, Moser makes all final determinations regarding the evaluation and promotion processes. The Board has consistently declined to find supervisory status when the participation of the alleged supervisory employee in the evaluation process does not, by itself, affect other employees' job status and thus, does not, alone, constitute effective recommendations for personnel action. See *Northcrest Nursing Home*, 313 NLRB 491, 498 fn. 37 (1993). Consequently, I conclude that the dispatchers' participation in the evaluation process of other dispatchers does not manifest supervisory authority under Section 2(11) of the Act.

The record discloses insufficient evidence that the assignment of calls to utility mechanics by service dispatchers entails the use of independent judgment. The record does not describe the guidelines followed during normal business hours. After hours, the service dispatchers followed detailed instructions. *Ferguson Electric Co.*, 335 NLRB 142, 147 (2001); *Bay Area-Los Angeles Express, Inc.*, 275 NLRB 1063, 1074-1076 (1985).

The limited authority, if any, of the midnight shift dispatcher in preparing the schedule for the next-day work of the utility mechanics based on a scheduling computer program also does not require the use of independent judgment in the direction of other employees. *Ferguson Electric Co.*, supra; *Bay Area-Los Angeles Express, Inc.*, supra. Further, the evidence suggests that the computer-inputted assignments to utility mechanics are routine in nature, and are based mainly on principles of fairness and even distribution of work. *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997).

Lead dispatcher McCabe's independent authority to send employees home and call in employees is arguably an indication of supervisory authority. However, only Moser testified briefly and non-specifically at the hearing regarding the issue of sending home and calling in employees. The record does not indicate how often employees have been sent home or called in by McCabe. Rather, the evidence suggests that McCabe has approved an employee's early departure only for illness-related reasons and has called in another employee to substitute for the ill employee.

The Employer also relies on several secondary indicia of supervisory status. However, the existence of secondary indicia of supervisory status such as the possession of keys, title, higher pay, and the like, standing alone, is insufficient to demonstrate supervisory status. *Shen Automotive Dealership Group*, 321 NLRB 586, 594 (1996); *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993). That the experienced dispatchers train new employees does not confer supervisory status since training does not involve the exercise of independent judgment, but is merely the status of more skilled and experienced employees over unskilled and inexperienced employees. *First Western Building Services, Inc.* 309 NLRB 591, 601 (1992).

The absence of Moser from the facility during non-business hours and the weekend, which leaves the dispatchers on duty unsupervised and McCabe in charge of the other dispatchers, does not require a finding of supervisory status of any of the dispatchers where there are on-call supervisors available at all hours to give direction and make decisions. *Id.* at 603 and cases cited. The absence of other supervision is one of the secondary indicia that may be considered in establishing supervisory status. See *Essbar Equipment Co.* 315 NLRB 461 (1994). However, standing alone, without evidence of primary indicia, it is insufficient to establish supervisory status. *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Finally, if all the dispatchers were found to be supervisory, there would be an excessively high ratio of supervisors for the utility mechanics (14 for 39) in an operation where job duties are repetitive and routine, and where upper management is present or accessible. *Airkaman, Inc.*, 230 924, 926 (1977). In contrast, the ratio of 6 supervisors for 47 employees is more reasonable.

Accordingly, I conclude that none of the service dispatchers are supervisors within the meaning of Section 2(11) of the Act.

Appropriate Voting Groups

In deciding appropriate units, the Board first considers whether the unit sought is appropriate. *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988). A union is not required to seek representation in the most comprehensive or largest unit of employees unless “an appropriate unit compatible with that requested does not exist.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P. Ballantine & Sons*, 141 NLRB 1103, 1107 (1963). A primary consideration in determining an appropriate unit is whether there is a significant community of interest between the employees that would require their inclusion in the unit. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490 (1985). The Board looks to a variety of factors to determine whether a community of interest exists including, *inter alia*, the degree of functional integration, common supervision, the nature of employee skills and functions, interchangeability and contact among employees, work sites, general working conditions, and fringe benefits. See *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163 (3rd Cir. 1986); *The Phoenixian*, 308 NLRB 826 (1992); *Home Depot USA*, 331 NLRB 1289 (2000).

In the public utility industry, the Board’s long-standing view is that the optimal bargaining unit is one which is system-wide. *New England Telephone & Telegraph Co.*, 280 NLRB 162 (1986). There, the Board noted its earlier statement in *Baltimore Gas & Electric*, 206 NLRB 199, 201 (1973), that the public utility industry “is characterized by a high degree of interdependence of its various segments” and that “the public has an immediate and direct interest” in the maintenance of the essential services that it provides. Thus, particularly to minimize disruptions in essential public services, the Board has been reluctant to fragmentize a utility’s operations by finding less than system-wide bargaining units to be appropriate.

However, the Board has found that less than system-wide units may be appropriate when no union seeks a more comprehensive unit and there is no opposing bargaining history. *Deposit Telephone Co.*, 328 NLRB 1029, 1030 (1999) and cases cited. Thus, the Board has been willing to find a less than system-wide unit appropriate where “(1) there is no recent history of bargaining on a system-wide basis; (2) the proposed unit encompasses a distinct administrative or geographical subdivision; (3) the Employer invests substantial autonomy in supervisors at the unit level; and (4) no union seeks to represent employees in a larger unit.” *Texas Electric Service Co.*, 261 NLRB 1455, 1458 fn. 13 (1982) and cases cited. In finding a less than system-wide unit appropriate, the Board has also considered whether the employees in the requested unit “enjoy a community of interest sufficient to make separate bargaining a feasible undertaking.” *New England Telephone & Telegraph Co.*, 249 NLRB 1166, 1167 (1980).

Here, the Employer and two unions have already established far less than system-wide units and the Employer and Petitioner are not in disagreement regarding their continuation. Rather, the issue is whether the Eastern district operations technicians 1,

bill collectors, and dispatchers should be included in the existing unit of utility mechanics and storekeeper. The Employer contends that none of the petitioned-for employees share a community of interest with the represented unit. Acknowledging that the operations technicians 1 and bill collectors share a sufficient community of interest, the Employer would agree only to a separate stand-alone unit of those two classifications.

Operations Technicians 1 and Bill Collectors

Although there is not a significant amount of employee interchange among the operations technicians 1 and bill collectors and the represented employees, the record does demonstrate a high degree of functional integration of the Employer's operations. The operations technicians 1 and bill collectors and represented employees all work in the field. The duties of the operations technicians 1 are functionally integrated with those of the represented utility mechanics, many of whom perform like or related duties, such as leak surveys and line locating/staking. Utility mechanics are occasionally called out by operations technicians 1 to respond to detected gas leaks. Importantly, a number of operations technicians 1 and utility mechanics are jointly supervised by Falk.

Likewise, the gas shutdown duties of the bill collectors are functionally integrated with those of the represented utility mechanics. A number of utility mechanics, like the bill collectors, perform gas shutdowns. There is also evidence of interaction when a bill collector is unsuccessful in shutting down a customer gas main and calls a utility mechanic for assistance. The operations technicians 1, bill collectors and represented employees work with the same customers and have the same customer base. The operations technicians 1 and bill collectors work similar hours, enjoy similar pay and benefit structures, and are subject to some of the same personnel policies as the represented utility mechanics.

Thus, I conclude the operations technicians 1 and bill collectors should have the opportunity to vote in a self-determination election as to whether to be included in the existing utility mechanics and storekeeper unit.

Service Dispatchers and Customer Service Representatives

The record indicates significant employee contact among the service dispatchers and customer service representatives, and a high degree of functional integration of the Employer's operations. Both classifications work inside the Employer's Lapeer Road facility and, while currently not located in close proximity to each other, they will both be relocating to the Employer's corporate headquarters where they will be located adjacently. Based on customer call volumes, they routinely handle calls for each other and are responsible for scheduling service calls with the represented service utility mechanics. They are jointly supervised by Moser, attend the same employee meetings, possess similar work schedules, and share similar pay and identical benefits. Thus, I find

that the service dispatchers, standing alone, are an inappropriate voting group based on their strong community of interest with the customer service representatives, as urged by the Employer, and any voting group which includes the service dispatchers must also include the customer service representatives.

Regarding the service dispatchers and the customer service representatives together, the record indicates insufficient community of interest between them and the operations technicians 1 and bill collectors to be included on the same voting ballot. There is virtually no employee interchange between the service dispatchers and customer representatives and the other petitioned-for employees. With respect to their duties and responsibilities, the record does not demonstrate evidence of any functional integration with the other petitioned-for employees, as the service dispatchers and customer service representatives are responsible for dispatching jobs to the represented utility mechanics only. The service dispatchers and customer service representatives spend all of their working time at the Employer's Lapeer Road facility, while the other petitioned-for employees spend a majority of their working time in the field. There is no commonality of supervision or in the nature of their skills and functions. Additionally, regarding work situs, while the service dispatchers, customer service representatives, and other petitioned-for employees currently report to the Lapeer Road facility, the service dispatchers and customer service representatives soon will be relocated to a separate building apart from the other petitioned-for employees.

However, there is a strong community of interest between the service dispatchers and customer service representatives and the represented employees and, therefore, they should have the opportunity, like the operations technicians 1 and bill collectors, to vote for representation in the existing unit of utility mechanics and storekeeper. In this regard, there is constant interaction among the service dispatchers and the represented employees. The service dispatchers perform dispatch work only for the represented employees and communicate with them on an ongoing daily basis via radio or in-truck terminal. Their exclusive and constant interaction with the utility mechanics in assigning runs establishes both work contact and work integration so as to establish additional common interests among these employees. *Eastman West*, 273 NLRB 610, 612-613 (1984). There is also significant interaction among the customer service representatives and the represented employees. The customer service representatives routinely assist the service dispatchers by taking calls for them and dispatching those calls to represented employees. The customer service representatives also schedule appointments for the represented service utility mechanics regarding non-emergency matters. In doing so, the customer service representatives communicate the necessary information directly to the represented employees.

Conclusion

Thus, I find that the operations technicians 1 and bill collectors possess a sufficient community of interest with the utility mechanics and storekeeper to be included in the Eastern District unit currently represented by the Petitioner, as urged by the Petitioner. Additionally, I find that, while the service dispatchers and customer service representatives do not possess a sufficient community of interest with the operations technicians 1 and bill collectors, they do share a strong community of interest with each other and the represented employees to be separately included in the Eastern District unit currently represented by the Petitioner. Including all these employees in the represented unit will less fragmentize the Employer's operations and cause less potential for disturbance of its necessary functions. *PECO Energy Co.*, 322 NLRB 1074, 1079 (1997).

For the reasons stated above, I conclude that self-determination elections are appropriate for the following voting groups:¹⁷

VOTING GROUP A: All full-time and regular part-time operations technicians 1 and bill collectors employed by the Employer at or out of its facilities located at 2915 Lapeer Road, Port Huron, Michigan and New Haven, Michigan; but excluding all operations technicians 2, operations technicians 3; corrosion technicians, operations specialists, gas control dispatchers, Miss Dig specialist, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Elections. If a majority of valid ballots in Voting Group A is cast for Petitioner, it will be taken to have indicated the employees' desire to be included in the existing utility mechanics and storekeeper unit currently represented by the Petitioner. If a majority of valid ballots in Voting Group A is not cast for representation, it will be taken to have indicated the employees' desire to remain unrepresented.

VOTING GROUP B: All full-time and regular part-time service dispatchers and customer service representatives employed by the Employer at its facility located at 2915 Lapeer Road, Port Huron, Michigan; but excluding all operations technicians 2,

¹⁷ As two voting groups were found appropriate herein, the Petitioner is accorded a period of 14 days from the date of this Decision and Direction of Elections in which to submit to the undersigned a sufficient showing of interest for Voting Group B. If insufficient showing of interest is submitted for Voting Group B, an election will be conducted only in Voting Group A. In the event the Petitioner does not wish to proceed with the election(s), it may withdraw its petition, or request not to proceed to an election in Voting Group B, without prejudice by notice to the undersigned within 14 days from the date of this Decision and Direction of Elections.

operations technicians 3; corrosion technicians, operations specialists, gas control dispatchers, Miss Dig specialist, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Elections. If a majority of valid ballots in Voting Group B is cast for Petitioner, it will be taken to have indicated the employees' desire to be included in the existing utility mechanics and storekeeper unit currently represented by the Petitioner. If a majority of valid ballots in Voting Group B is not cast for representation, it will be taken to have indicated the employees' desire to remain unrepresented.

Dated at Detroit, Michigan, this 3rd day of November, 2004.

(SEAL)

“/s/[Stephen M. Glasser].”

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
National Labor Relations Board – Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTIONS

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

UTILITY WORKERS UNION OF AMERICA (UWUA), AFL-CIO

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of election eligibility lists for Voting Group A and for Voting Group B containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the elections. The lists must be of sufficient clarity to be clearly legible. The lists may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. In order to be timely filed, such lists must be received in the **DETROIT REGIONAL OFFICE** on or before **November 10, 2004**. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **November 17, 2004**.

POSTING OF ELECTION NOTICES

- a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.
- b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.
- c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */
- d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.